



# CITY OF CORONADO

## CITY COUNCIL STAFF REPORT

April 15, 2025

{{section.number}}c

### **PUBLIC HEARING: 500 A AVENUE (PC2024-06) - APPEAL OF THE COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION TO CONDITIONALLY APPROVE A REQUEST FOR REASONABLE ACCOMMODATION**

#### **RECOMMENDATION:**

Deny the appeal and adopt a resolution upholding the Community Development Director's determination to conditionally approve a Request for Reasonable Accommodation for the property located at 500 A Avenue.

#### **BACKGROUND:**

This is an appeal of the Community Development Director's ("Director") decision to conditionally approve James and Melinda S. Marlar's ("Applicants") Request for a Reasonable Accommodation from the City's zoning standards to install an elevator at 500 A Avenue ("Director's Determination"). The Director's Determination, dated February 7, 2025, conditionally approved the requested elevator plus additional space for a hallway, but denied the Applicants' request for additional storage space. Applicants have appealed the decision because their request for an approximately 321 square-foot, second story addition above their garage to provide additional storage space was not approved.

The Director approved the Reasonable Accommodation request for an elevator because the Applicants provided necessary documentation from a licensed physician attesting to their mobility limitations and need for accessibility improvements. The request for the approximately 321 square-foot second story addition was not approved because the City has no recorded history of authorizing zoning waivers for surplus storage areas through a Reasonable Accommodation request and the Applicants were unable to demonstrate that their expressed lack of storage space could not be reasonably addressed through alternative means that would not require zoning waivers. Because this request was considered extraordinary and had the potential to establish new City policy, the Director determined the request exceeded staff's authority to approve.

#### **ANALYSIS:**

Chapter 70.130 *et seq.* of the Coronado Municipal Code ("CMC") provides a procedure for individuals with disabilities to file a Request for Reasonable Accommodation under the Federal Fair Housing Act and the California Fair Employment and Housing Act ("Acts") in the application of zoning laws and other land use regulations, policies and procedures. CMC section 70.130.030.B further provides that "[a] request for reasonable accommodation may include an application for a modification or exception to the application of zoning and building standards and use of housing or housing-related facilities in order to eliminate identifiable regulatory barriers to provide a person with a disability an equal opportunity to housing."

Reasonable Accommodation requests are typically sought when zoning or building regulations restrict or prevent the construction of necessary accessibility improvements, such as wheelchair ramps, elevators, wider driveways, and/or accessible bathrooms. The City is obligated to make reasonable accommodations, including relaxing or waiving code requirements, when the requested accommodation is necessary to give a person with disabilities an equal opportunity to use and enjoy a dwelling.

Pursuant to CMC section 70.130.040, reasonable accommodation applicants must provide credible documentation of their qualifying disability (e.g., a doctor's note) and credible documentation that establishes why the requested accommodation(s) are necessary.

### **500 A Avenue Application**

The subject application included a request to install an elevator within an attached two-car garage and construct an approximately 321 square-foot second story addition to provide an elevator landing/mechanical room and additional storage area. The requested improvements would require the following zoning waivers:

- **Off-street Parking** (CMC §§ 86.58.030, 86.58.070, 86.58.150): Placement of the elevator within the garage would displace one of the two required covered parking spaces;
- **Floor Area Ratio (FAR)** (CMC § 86.08.035): The existing 2,767 square-foot home currently exceeds the maximum allowable FAR of 2,704 square-feet. The proposed 321 square-foot addition would further exacerbate non-compliance with FAR;
- **Setbacks** (CMC § 86.08.070): The proposed second story addition would encroach 11-feet into the second story rear yard setback.

The Applicants did not submit building plans as required by CMC section 70.130.050(A).

### **Director's Determination**

The Director may grant a requested accommodation, or grant it with modifications, if all of the following findings required by CMC section 70.130.060(A) can be made:

- (1) The housing which is the subject of the request will be used by an individual or a group of individuals considered disabled under the Acts;
- (2) The accommodation requested is reasonable and necessary to make specific housing available to the individual or group of individuals with disability or disabilities under the Acts;
- (3) The requested reasonable accommodation would not impose an undue financial or administrative burden on the City; and

- (4) The requested reasonable accommodation would not require a fundamental alteration in the nature of a City program or law including, but not limited to, land use and zoning.

Regarding the reasonableness of the requested accommodation, under CMC section 70.130.060(B), the Director may also consider:

- (1) Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit; and
- (2) Whether the requested reasonable accommodation substantially affects the physical attributes of the property.

Because the project would necessitate an unusually high number of zoning exceptions compared to typical Reasonable Accommodation applications, while evaluating the reasonableness of the requested accommodation, staff requested that the applicant evaluate alternatives that would provide needed accessibility improvements but minimize the need for zoning exceptions.

The Applicants for 500 A Avenue were self-represented and did not have the benefit of an experienced architect or designer to assist them through the process. The Applicants did not submit building plans as required by CMC 70.130.050(A) and did not have a representative with the requisite expertise and experience to properly evaluate alternatives that could meet their project objectives while minimizing zoning code conflicts. Consequently, the Applicants did not offer any alternatives to their preferred design. Staff suggested alternative locations for the elevator outside of the garage, but the Applicants were unwilling to consider these alternatives as they believed it would impact the value of the home, the symmetry of the home, and the design of the home, while reducing their outdoor patio space.

Recognizing that the Applicants lacked professional representation and were generally unfamiliar with development permitting processes, staff deferred the submittal of building plans until the building permit stage.

As to necessity, Applicants did not provide evidence that additional storage space is necessary to afford them an equal opportunity to use and enjoy the dwelling. Applicants have stated why they *prefer* not to store their belongings elsewhere (e.g., “bedrooms and their small closets are intended for visiting family and guests”), but have not articulated why their *disabilities* preclude those options. Further, there is no evidence that the Applicants’ disabilities necessitate additional storage (e.g., due to disability-specific equipment.)

Ultimately, the Director was unable to make a finding that the accommodation requested for additional storage was reasonable and necessary to make specific housing available to the Applicants. On February 7, 2025, the Director issued a decision (Attachment 2) that: (1) approved installation of an elevator in their preferred garage location and authorized the loss of one off-street parking space; (2) approved an approximately 36 square-foot elevator mechanical room on the garage roof; (3) granted the Applicants an

approximately 40 square-foot addition above the garage to serve as a hallway between the elevator landing and main house; and (4) allowed future project revisions during the building permit stage to extend the elevator to the basement to improve access to storage areas.

### **Storage Space Request**

The basis of this appeal is the applicant's request to build an approximately 321-square foot second-story addition above their garage to provide an elevator landing, mechanical room, and surplus storage space. The Applicants have indicated that they need additional storage space because their mobility issues make it difficult to access their attic which has served as a storage area and they wish to replace the lost attic space with the proposed second story addition.

The request for additional storage space in conjunction with a reasonable accommodation application is without precedence in Coronado. Staff reviewed all reasonable accommodation applications submitted since 2012 and none included an addition to provide extra storage space. Moreover, City staff has had no experience with reasonable accommodation requests for additional storage space during their tenures working in other California jurisdictions.

Although this request is uncommon, it is not unusual for an applicant to request an addition to provide an ADA accessible living area, bathroom, and/or closet. Ultimately, however, the question of whether a given accommodation is a reasonable and necessary accommodation for a disability is a question of fact, and staff does not believe that the facts here demonstrate that the requested amount of additional storage space is reasonable or necessary.

The residence at 500 A Avenue is not a small or undersized home by Coronado standards. The home offers approximately 2,354 square-feet of internal living space, an approximately 600 square-foot basement, and an approximately 413 square-foot two-car garage, that collectively provide an approximate total of 3,367 square-feet of space that can be used as living area and/or storage (not including attic space).

The Applicants have based their appeal on the following issues:

***Issue No. 1: Conclusion No. 4 is erroneous and should be modified or reversed, because the allowed 40 square feet of "hallway" or travel path from the elevator to the home's access point is inadequate, difficult to feasibly construct, awkward in that it does not create a factually viable travel path, and harms the architectural integrity and features, and thereby lessens the property value of the home. Conclusion No. 4 is not a "reasonable" one.***

**Staff Response to Issue No. 1:** The referenced section of the Director's Determination (Attachment 2) indicates that the Applicants have not sufficiently demonstrated that the requested accommodation for surplus storage space is necessary to afford them with an equal opportunity to use and enjoy the dwelling and cites potential, alternative storage

solutions that the Applicants could have explored, such as extending the elevator into the basement, siting the elevator elsewhere to preserve existing storage space in the garage, or storing belongings elsewhere in the 3,367 square-foot home or at an off-site storage facility.

The Applicants assert that the 40-square feet granted to construct a hallway between the elevator landing atop the garage and the home's second story is inadequate and difficult to feasibly construct. The Applicants were not represented by an architect or professional designer and consequently did not submit any evidence that additional square-footage would be necessary to feasibly construct a hallway. Condition No. 4 to the Director's Determination qualified the "approximately" 40-square-foot allowance to enable flexibility in the final design. As noted above, staff deferred the submittal of building plans until the building permit stage. Condition No. 4 specifically states that "[t]he exact dimensions of the hallway would need to be demonstrated within the Building Permit to allow for adequate access as required by law." If, during the building plan process, the Applicants submit plans and complimentary evidence that additional area is needed to construct a code-compliant hallway, staff believes that this situation would be allowed under the language of Condition No. 4.

The Applicants also contend that a hallway above the garage roof, as opposed to a full second story addition, would harm the home's architectural integrity and would result in a diminished property value. The Applicants did not provide any evidence that a hallway could not be architecturally integrated into the existing home or that a small addition would diminish property values. Moreover, while staff empathizes with the Applicants' concerns, potential impacts to property values are not a code finding to approve a Reasonable Accommodation request.

Finally, the Applicants allege that the City's conclusion is not "reasonable"; however, it is the Applicants' burden to demonstrate that their request is reasonable and necessary and that there are no alternatives that would provide an equivalent level of benefit (CMC section 70.130.060(B)). As noted, the Applicants did not submit building or design plans, architectural renderings, or any other evidence to support that their preferred design is the only feasible means to afford them with an equal opportunity to use and enjoy their home.

***Issue No. 2: Finding No. 2, is erroneous, in that it disallows any square-footage to be used for "accessible storage space." The Finding that there were "alternative reasonable accommodations" available which would "provide an equivalent level of benefit" is unsupported by the facts.***

***Staff Response to Issue No. 2:*** Finding number 2 states "...the accommodation requested for additional storage space at the second story is not reasonable or necessary to make specific housing available to the individual or group of individuals with disability or disabilities, because the Applicants have not sufficiently demonstrated that the requested accommodation is necessary to afford the disabled resident(s) an equal opportunity to use and enjoy the dwelling, and because there are alternative reasonable

accommodations available that would provide an equivalent level of benefit. Belongings can be stored elsewhere within the dwelling (e.g., bedrooms, basement, attic, or offsite storage), and the requested accommodation does not actually provide access to the areas of the dwelling (e.g., basement, attic) that the Applicants claim they can no longer access due to their disabilities.”

It is the Applicants’ burden to provide sufficient and credible evidence that their request is reasonable and necessary, and that there are no alternatives that would provide an equivalent level of benefit, pursuant to CMC section 70.130.060. The Applicants did not meet this burden. First, Applicants have not sufficiently demonstrated that their requested accommodation for additional storage space is necessary. Applicants have stated why they prefer not to store their belongings elsewhere, but have not articulated why their disabilities preclude those options. Further, there is no evidence that the Applicants’ disabilities necessitate additional storage (e.g., due to disability-specific equipment that takes up a lot of space.) Second, as previously noted, the Applicants did not submit building or design plans, architectural renderings, or any other evidence to support that their preferred design is the only feasible means to afford them with an equal opportunity to use and enjoy their home. The Applicants claim that the loss of storage space in their garage from the elevator is a reason why they should be allowed to increase the square footage of their home, despite that being the location that they chose. Staff suggested alternative locations for the elevator outside of the garage, which would have retained storage space in the garage, but the Applicants were unwilling to consider these alternatives.

***Issue No. 3: The filing and appeal fees, for disabled individuals to seek “reasonable accommodation” under the Fair Housing Act should be minimal, if anything, as such an accommodation is a “protected right” under federal law.***

***Staff Response to Issue No. 3:*** Staff is not aware of any prohibitions in Federal, State, or local law that prevent the collection of fees in exchange for processing a Reasonable Accommodation request and has observed that many other cities do assess a modest processing fee similar to Coronado. The City’s Reasonable Accommodation fee of \$450 and only covers approximately 2-4 hours of City staff time and applicants are not required to pay any additional fees even if staff spends significantly more time working on their permit request. The City’s appeal fee of \$684 is also relatively low and is not inconsistent with appeal fees established by other cities in California.

### **Director Discretion**

The City Council and their subordinate commissions appropriately serve as decision-makers for the vast majority of discretionary land use permits in Coronado. While the Community Development Director has authority to issue decisions for ministerial permits and some minor discretionary actions, the Reasonable Accommodation process is one of the rare instances where the Director is empowered to waive Council adopted zoning standards without any public notice or public hearings.

When considering a discretionary application, the Director is guided by adopted federal, state, and local laws, City Council policies, and the City's past actions and decisions on similar matters to ensure decisions are legally sound, consistent with City policy and precedence, and within the scope of staff's authority.

In this case, the request for a second story addition and associated FAR waiver was without precedence in Coronado, and the Director was concerned that approving it could encroach into the City Council's policy making duties and exceed staff's authority.

Although staff reviews each application based on its own merits, authorizing novel development proposals and/or applying new standards to approve projects can set expectations in the community that precedence has been established for future, similar projects to also be approved.

The potential of establishing even the perception of precedence was a further concern for staff given the lack of Council policy or direction. For example, if staff were to approve this request for the 321 square-foot addition and associated FAR waiver, would a future application for a 500 or 700 square-foot addition also be permissible? How much storage space should be considered "reasonable" within a single-family home? Should the size of the home or available storage space be factors when considering requests for additional storage space? Are uses other than storage acceptable to justify home additions that exceed FAR, such as an area for therapeutics, exercise, and/or physical therapy?

If the City Council determines this application to be an acceptable Reasonable Accommodation request, staff would recommend that the Council consider adopting a policy or code amendment to establish the types of allowable uses, standards, and thresholds that should be applied by staff when reviewing Reasonable Accommodation requests for additions to homes that exceed allowable FAR.

**FISCAL IMPACT:**

None.

**ALTERNATIVE:**

The City Council may overturn the Director's determination and approve the request for a second story addition to provide extra storage space. The City Council could also remand the case back to staff to allow the Applicants to submit architectural and/or building plans and work with a professional designer to explore alternative solutions that meet their project objectives while reducing the need for zoning waivers.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

Staff previously determined that the project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Existing Facilities) and Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines (Cal. Code Regs., tit. 14, ch. 3).

**PUBLIC NOTICE:**

A public notice regarding this agenda item was published in the Coronado Eagle & Journal on April 3, 2025 and was mailed to all property owners within 300 feet of the subject property.

**ATTACHMENTS:**

1. Request for Reasonable Accommodation signed application
2. Request for Reasonable Accommodation Determination
3. Applicant Appeal Hearing Form
4. Applicant Supporting information
5. Resolution 2025-18

Submitted By: Community Development Department / Marisa Smith